

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) NO: 14-CV-1025 RB-SMV
)
THE CITY OF ALBUQUERQUE,)
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS
TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE STEPHAN M. VIDMAR
UNITED STATES MAGISTRATE JUDGE
THURSDAY, AUGUST 9, 2018
1:30 P.M.
LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO

(Proceedings recorded by machine shorthand and
transcript produced by Computer-Aided Transcription.)

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4 District of New Mexico
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5 BY: ELIZABETH M. MARTINEZ, ESQ.

6 and

7 U.S. DEPARTMENT OF JUSTICE
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BY: PAUL KILLEBREW, ESQ.

9 and

10 U.S. DEPARTMENT OF JUSTICE
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12 FOR THE CITY OF ALBUQUERQUE:

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1 TELEPHONIC APPEARANCES continued:

2 Also Present:

3 DR. JAMES D. GINGER
4 Court-appointed Independent Monitor

5 CHIEF MICHAEL GEIER
6 COMMANDER MICHELLE CAMPBELL
7 CHIEF OF STAFF JOHN ROSS
8 COMMANDER ANGELA BYRD
9 COMMANDER ROBERT MIDDLETON
10 DEPUTY CHIEF ERIC GARCIA
11 DEPUTY CHIEF HAROLD MEDINA
12 DEPUTY CHIEF ARTURO GONZALEZ
13 DEPUTY CHIEF ROGELIO BAÑEZ
14 LIEUTENANT CORI LOWE
15 LIEUTENANT JENNIFER PEREZ
16 SERGEANT ERIC NELSON
17 SHANIA GALLEGOS
18 Albuquerque Police Department

19 JAMES LEWIS
20 Mayor Keller's Office

21 HONORABLE LORENZO F. GARCIA, RET.

22 DR. PETER WINOGRAD, Consultant

23 ALYSSA FERDA, USAO Outreach Coordinator
24 LAUREN SOHERR, USAO Staff

25 DIONNA K. FORD, Law clerk

1 (On the record at 1:30 P.M.)

2 COURT CLERK: The United States District Court
3 for the District of New Mexico is now in session, the
4 Honorable Stephan M. Vidmar presiding.

5 THE COURT: Good afternoon. This is Judge
6 Vidmar. We are on the record in *United States of America*
7 *versus City of Albuquerque*, 14-CV-1025. I'd like counsel to
8 enter your appearances.

9 Let's first hear entries of appearance for the
10 attorneys who are here for the United States.

11 MS. MARTINEZ: On behalf of the United States,
12 Elizabeth Martinez, Senior Litigation Counsel at the United
13 States Attorney's Office for the District of New Mexico.
14 Good afternoon, Your Honor.

15 THE COURT: Afternoon, Counsel.

16 MR. KILLEBREW: Afternoon, Your Honor. This is
17 Paul Killebrew from the Civil Rights Division, Department of
18 Justice.

19 THE COURT: Afternoon.

20 MR. RYALS: Afternoon, Your Honor. This is
21 Stephen Ryals of the Civil Rights Division, Department of
22 Justice.

23 THE COURT: Afternoon, Counsel.

24 Anyone else here for the United States?

25 All right. For the City of Albuquerque, Counsel,

1 please enter your appearances.

2 MR. AGUILAR: Good afternoon, Your Honor.
3 Esteban Aguilar, Jr., City Attorney, on behalf of the City
4 of Albuquerque.

5 MR. SCHMEHL: Jeramy Schmehl.

6 THE COURT: Counsel. And good afternoon.

7 MS. VAN METER: Lindsay Van Meter, Assistant City
8 Attorney for the City of Albuquerque.

9 THE COURT: Any other counsel for the City of
10 Albuquerque?

11 JUDGE GARCIA: This is Lorenzo Garcia. I'm
12 appearing on behalf of the City Council, but not as legal
13 representative, as the City Council is ably represented by
14 the attorneys from the City Attorney's Office.

15 THE COURT: Afternoon, Judge.

16 Do we have the monitor here as well?

17 DR. GINGER: Yes, Your Honor. It's Jim Ginger
18 for the monitoring team.

19 THE COURT: Afternoon, Dr. Ginger.

20 All right. Is there anyone else who needs to
21 enter an appearance?

22 MALE SPEAKER: Your Honor, on behalf of the City
23 of Albuquerque, we have the Albuquerque Police Department
24 personnel. And I will go around the room and have them
25 introduce themselves very briefly.

1 THE COURT: Okay.

2 CHIEF GEIER: Mike Geier, Chief of Police.

3 CDR. MIDDLETON: Rob Middleton, Commander of
4 Internal Affairs Force.

5 D.C. GARCIA: Eric Garcia, Deputy Chief of
6 Compliance Bureau.

7 CDR. CAMPBELL: Michelle Campbell from the
8 Compliance Bureau.

9 LT. LOWE: Cori Lowe, Lieutenant with the APD.

10 MS. GALLEGOS: Shania Gallegos.

11 LT. PEREZ: Jen Perez with the APD.

12 THE COURT: I didn't hear the last person
13 there -- the last two, please.

14 MR. AGUILAR: Shania Gallegos and Jen Perez, both
15 from APD.

16 THE COURT: Thank you.

17 MR. AGUILAR: Yes, Your Honor.

18 MALE SPEAKER: Sgt. Eric Nelson, APD.

19 D.C. GONZALEZ: Art Gonzales --

20 THE COURT: I'm sorry. You're going to have to
21 speak a little clearer.

22 D.C. GONZALEZ: Art Gonzalez, Deputy Chief APD
23 Investigations.

24 THE COURT: Sir.

25 D.C. MEDINA: Harold Medina, Deputy Chief APD.

1 C.O.S. ROSS: John Ross, APD.

2 MR. LEWIS: James Lewis, Mayor's Office, APD.

3 CDR. BYRD: Angela Byrd, APD

4 Commander-in-Training APD.

5 MR. AGUILAR: And that's all of us, Your Honor.

6 MR. MOWRER: May it please the Court, Your Honor,
7 this is Frederick Mowrer on behalf of the Union, APOA.

8 THE COURT: Afternoon, Counsel.

9 All right. Have we covered everyone who is here
10 this afternoon?

11 LAW CLERK: Good afternoon, Your Honor. This is
12 Dionna Ford.

13 THE COURT: Oh, hi, Dionna. How are you doing.

14 MS. MARTINEZ: Your Honor, this is Elizabeth
15 Martinez. We've been joined by a couple more members of the
16 APD staff. One of the things I would like to suggest for
17 the Court is that immediately after this status conference,
18 we submit to the Court's clerk a comprehensive list of
19 everyone who has come into this conference room, so that the
20 Court's court reporter can have a complete list of everyone,
21 including their names, full spellings, and title.

22 THE COURT: All right. Well, I would sure
23 appreciate that. That's a great idea.

24 MS. MARTINEZ: And the two individuals who just
25 walked in were Deputy Chief Arthur Bañez and Dr. Peter

1 Winograd.

2 THE COURT: All right. Thank you, Counsel. Are
3 we ready to proceed to the first thing on the agenda?

4 MR. AGUILAR: We are, Your Honor.

5 THE COURT: All right. My understanding is, is
6 the first thing we want to address is CASA paragraph 298
7 Outcomes Assessment Report. And that is Dr. Ginger's
8 report, which was filed on August 6, 2018.

9 And Dr. Ginger, will you be addressing this?

10 DR. GINGER: I will, Your Honor. Thank you.

11 THE COURT: All right.

12 DR. GINGER: What we found for the second 298
13 report was a drastically improved database provided by APD
14 regarding each of the elements of that report. Readers of
15 the first report understand that we were less than pleased
16 with the response of APD to the requirements of that
17 paragraph for the first report that we wrote. What we found
18 here is a remarkable improvement. And kudos to APD for
19 putting together what they did. I know it took a great deal
20 of time and effort and a great deal of attentiveness to get
21 those records correct.

22 Regarding the new database, we found the data
23 that was provided to be both internally reliable -- in other
24 words, table to table, if it reported a use of deadly force
25 in one table, the same number was present for that same

1 factor in other tables, so it was internally reliable -- and
2 we found it to be externally valid. In other words, it
3 included events that the monitoring team knew about through
4 its own research and its own documentation. So we had sort
5 of a double assessment of how reliable and useable that
6 database was, and it scored exceptionally high on both of
7 those.

8 What -- with this new report, we now have a
9 baseline. The first report was, in our opinion, was not
10 accurate enough to establish a baseline. In the second
11 report, we now have one. And each new report, as the years
12 go by, will add a column for the current year and be able to
13 track those numbers reliably over time, which is exactly
14 what that report is designed for.

15 We still found some gaps in the data, in the
16 second report, for 2014 and 2015. That was despite APD's
17 current attempt to go back and find as much data as they
18 could and get -- and ensure that they were included in the
19 second set of data tables. Those were not to the point that
20 they created serious weaknesses, and they're simply
21 reflective of the old record-keeping versus new
22 record-keeping. And that is not -- it's not something that
23 we don't routinely experience in other long-term databases.

24 In short, APD has done a stellar job with this
25 current set of data reports. We were able to use them

1 fairly fluidly. And I hope the draft of the report made
2 good sense and it should serve as a really good foundation
3 for the next report due next year.

4 THE COURT: Excellent. That's good news. Have
5 you covered everything you wanted to cover?

6 DR. GINGER: Yes, sir, thank you, Your Honor.

7 THE COURT: All right. Would anyone from the DOJ
8 like to -- or let's go to the City of Albuquerque first.
9 Anyone from the City of Albuquerque like to comment on the
10 report that Dr. Ginger just discussed?

11 MR. AGUILAR: Thank you, Your Honor. This is
12 Mr. Aguilar on behalf of the City. I'll speak first and
13 then I think the Chief may have a few comments.

14 Again, echoing what Dr. Ginger has said, the
15 report shows that under the current administration at the
16 City of Albuquerque, as well as any leadership under the
17 Albuquerque Police Department, the City has made substantial
18 improvements and strides in this effort to collect and to
19 provide the monitor with useful and accurate data. The City
20 has made drastic improvements in reporting uses of force,
21 largely ameliorating the residual use-of-force problems that
22 existed under the prior administration.

23 What's interesting is that, when APD officers are
24 using force, they're utilizing lower levels of force, such
25 as takedowns and hand-to-hand techniques, which is -- which

1 is always a positive. There has been a notable impact on
2 policy and training on the reporting of force by APD
3 officers, as well. It can be seen by the fact of -- with
4 the reported spike in reports in 2016 after the delivery of
5 training and as APD improved our record-keeping and
6 reporting processes. There's notable decline, indicating --
7 in 2017, indicating the impact of the new policy training,
8 supervisory and managerial training that's been taking place
9 at APD.

10 There are more general critical aspects of the
11 report concerning reporting and data collection, but the
12 City has -- is reviewing all of the recommendations from the
13 monitor, and we are taking -- we're analyzing all of the
14 tables and all of the other information so we can improve --
15 continue to improve on those numbers and on the
16 recommendations made by the monitoring team.

17 And I will turn the line over to Chief Geier.

18 CHEIF GEIER: Good afternoon. First of all, I'd
19 like to acknowledge our appreciation for the remarks of
20 Dr. Ginger. We've known, through his assistance and his
21 way-forward process, that we would be able to get through
22 some of those problems and the concerns and some of the
23 roadblocks that we faced when we first came on board.

24 I want to also acknowledge the team, obviously,
25 led by Deputy Chief Garcia and Dr. Winograd, who

1 tremendously helped with this particular paragraph, and the
2 whole team that contributed to that effort. The combined
3 team effort there is what got us through those obstacles to
4 where we are now. We realize that there's still a long way
5 ahead. And due to these investigative foundations for
6 achieving total compliance, I think we're on track. And
7 again, we appreciate all the efforts of the monitoring team
8 and the DOJ, so thank you all.

9 THE COURT: Chief.

10 Anybody else for the City of Albuquerque?

11 MR. AGUILAR: No, Your Honor.

12 THE COURT: Appreciate your comments.

13 How about for the United States?

14 MR. KILLEBREW: Your Honor, this is Paul
15 Killebrew for the United States. Thank you very much. I
16 want to take a step back to talk for a second about the
17 purpose of this 298 Outcomes Assessment report. The 298
18 Assessment report does not look only at whether APD is doing
19 what the Consent Decree requires in terms of passing policy
20 or instituting training, but whether those efforts are
21 having an impact on policing in the street.

22 And so what we could design there are a series of
23 methods that we can look at and say, is this -- is what --
24 are all of the efforts we have undertaken having the impact
25 that we would expect, and does that impact show that the

1 pattern of practice of constitutional violations has been
2 eliminated? So looking at the second Outcomes Assessment
3 Report, I think we can answer that question that, no, we are
4 not there yet, but we have some promising signs of progress.

5 So a couple of things that I would highlight:
6 The report shows that force, reported force, increased after
7 implementation of the CASA. And that's exactly -- as
8 Dr. Ginger points out in the report, that is exactly what we
9 would expect because now officers are reporting the force
10 that they use. So while the numbers show that officers --
11 an increase in the amount of hands-on force, I think that
12 that probably represents an increase in the reporting of
13 hands-on force, not that more of it is actually being used.
14 And that's good because now we have a more reliable
15 indication of how much force is actually being used out
16 there. And Mr. Aguilar is absolutely correct, you're seeing
17 officers using the more serious kinds of force less
18 frequently and they're utilizing the less invasive forms of
19 force more frequently, which I think is an indication that
20 they're being careful in the decision to use force and what
21 kind of force to use, which is in line with the goals of the
22 CASA.

23 There is another number that Dr. Ginger pointed
24 out as something we all need to look into more, which is
25 that, in 2017, S.W.A.T. activations nearly doubled from the

1 previous year. And that's without a change, that I'm aware
2 of, in S.W.A.T. policy on when it goes out to a scene. So
3 we will be curious to see the City look into that issue and
4 try to understand why the S.W.A.T. team was used so much
5 more frequently in 2017 versus 2016. I will say that one
6 comfort about that number is that the S.W.A.T. activations
7 have typically not resulted in injury to individuals. Many
8 of those encounters with S.W.A.T. typically end with an
9 arrest and no force used against the individual.

10 Another issue that we see in this report is that
11 the accountability for out-of-policy uses of force continues
12 to be a problem. I think we see that officers who use force
13 outside the policy have historically not been held
14 accountable for it. Later in this status conference, we're
15 going to talk about APD's efforts to resolve its
16 use-of-force backlog, investigations that are older. And
17 that process has given me some comfort, going forward, that
18 APD is holding officers accountable when the policy is not
19 consistent -- I mean, the use of force is not consistent
20 with the policy.

21 I think, in the future, what we'll be looking for
22 from APD and the City is to continue improving the data
23 systems. There were some numbers in the report that we
24 weren't sure how APD has collected the data and reported the
25 data to Dr. Ginger. And so we had reached out to the City

1 to start to understand those issues a little bit better.

2 But in general, I think the report shows that we are on the
3 right path, though we still have some progress to make.

4 Thank you, Your Honor.

5 THE COURT: All right. Thank you, Mr. Killebrew.
6 Mr. Mowrer?

7 MR. MOWRER: Your Honor, all I would say is I
8 think the report shows the hard work of the officers of the
9 Albuquerque Police Department are doing in the field and
10 that this progress is continuing to go forward and that the
11 Department and its employees should be proud of the goals
12 that they have met. Thank you.

13 THE COURT: All right. Very good.

14 Would anyone else like to comment on Agenda Item
15 Number 1?

16 MS. MARTINEZ: Your Honor, Elizabeth Martinez.
17 If I may?

18 THE COURT: Okay.

19 MS. MARTINEZ: One of the things that with every
20 status conference is that the United States orders the
21 transcript and we make it available very broadly to the
22 community. And so one thing I'd like to make sure is very
23 clear is that this report reports on activities through the
24 end of 2017. And so I'd like to make sure that everyone is
25 clear that this does not reflect performance and conduct by

1 APD officers in 2018. So I'd just like to make sure that
2 the record reflects that.

3 Thank you, Your Honor.

4 THE COURT: Very good. Thank you.

5 Would anyone else like to comment on Agenda Item
6 Number 1?

7 MALE SPEAKER: No, Your Honor.

8 THE COURT: All right. Let's move to Agenda Item
9 Number 2, update from APD Internal Affairs regarding
10 use-of-force investigation backlog. I understand that
11 Cdr. Middleton will address this?

12 CDR. MIDDLETON: Yes, sir. Let me move closer to
13 the mic.

14 THE COURT: Very good.

15 CDR. MIDDLETON: This is Cdr. Middleton. And I
16 have a brief project status report and an update on the
17 backlog.

18 We have 314 -- 315 backlog use-of-force cases,
19 that includes show of force as well. And there are 26
20 serious use-of-force cases in the backlog, for a total of
21 341. Of those cases, 20 of them are at the detective level
22 right now being reviewed. 14 are at the sergeant level.
23 That means the detective has already completed their review
24 of the investigation and the sergeant is reviewing it for
25 accuracy. Fourteen cases were closed and they were found to

1 be in policy. Five cases were closed and found to be out of
2 policy. And of the original findings for all of those
3 cases, only one was closed out of policy originally. That
4 means we changed the finding on four of those cases.

5 In total right now, we've closed six out of
6 policy. And I can give you an example of one and what we're
7 finding in how long it takes to review one of these cases.

8 THE COURT: Okay.

9 CDR. MIDDLETON: A case file that happened
10 April 17, 2017. And I'm not going to go into great detail.
11 I'm going to give you a synopsis of it. It's a petty
12 shoplifting at a Walmart. When the officer arrived, he
13 identified the offender, so he had probable cause to make a
14 detention and conduct an investigation. The offender chose
15 to run from the officer, and the officer tased him in the
16 back as he ran. We found this, through a review, that it
17 was out of policy, and we found some other issues with this
18 as well. And what the backlog officers are doing when they
19 review these cases is they're looking at everything, not
20 just use of force. So for this example, they found that the
21 officer failed to assess the situation, carefully
22 communicate with others. He failed to identify additional
23 resources to help him in the situation, and he decided to
24 close distance rather than deescalate. He didn't take
25 charge of the scene, and the supervisor responding to the

1 call failed to conduct a thorough, rigorous investigation.

2 So these are a few of the findings in one case
3 out of 341. And the mean time for review of one case that
4 we've found so far is about 17.2 hours.

5 THE COURT: Wow.

6 CDR. MIDDLETON: So about 17 hours for every
7 single case. And this is to get through 341.

8 So what's interesting, too, is we've had two
9 officer-involved shooting cases from the backlog and in the
10 review process from the beginning. Those are going to take
11 more time to investigate because there's a great deal of
12 evidence to consider while reviewing these cases.

13 THE COURT: How do you prioritize them for
14 review? Is it -- or is it just chronologically, you go to
15 the oldest one first and go forward, or is there some method
16 of triaging, if you will?

17 CDR. MIDDLETON: We do have a method. We found
18 that the top -- we've prioritized it by investigating the
19 top nine users of force first. We found that the top nine
20 users of force accounted for over 100 use-of-force
21 incidents, so we wanted to address that first and make some
22 sort of proactive changes while we're still getting incoming
23 use-of-force cases. So if there's something that we could
24 effect in the meantime, that's the goal, that we'll track
25 these first top nine users of force.

1 We also are putting -- we are finding the first
2 three officer-involved shooting cases are in the backlog
3 being investigated first for the serious uses of force. And
4 another interesting fact that I can bring up is we're
5 putting a mean time on everything, how long it takes for
6 each step of this process to take. And one thing I didn't
7 bring up two days ago was it takes about 6.7 hours to view
8 the videos for every single case. If you multiply that by
9 341, it's going to take 2,284 hours just to watch the videos
10 for these cases. With those cases closed, we're at
11 7.3 percent of all these cases closed up to this point.

12 THE COURT: Okay. Thank you.

13 Let me ask first, Dr. Ginger, would you like to
14 comment on anything that Cdr. Middleton said?

15 DR. GINGER: Yes, I would, Your Honor. Thank
16 you. What APD has gone through with this use-of-force
17 backlog process is almost exactly what we've been after APD
18 to do since Day 1, which is a true systems-analysis approach
19 to problems and issues, find out -- find out, in a given
20 problem chain, where the measure piece is and start
21 addressing those pieces, not only retroactively, but
22 proactively.

23 So this is an excellent start. Their
24 systems-analytic process is top-notch. I mean, they've
25 really done a good job. This will turn into a model process

1 for other police agencies. So I think they can be proud of
2 what they've conceptualized and what they've done. And to
3 date, the execution has been -- we haven't found any errors
4 or issues with that execution. The only major issue we see
5 is a measure of manpower and time. And given the backlog
6 that APD was confronted with this year, it's simply going to
7 take some time to get this resolved.

8 THE COURT: Okay. All right. Well, good.
9 That's good to hear. I'm sure Judge Brack will be glad to
10 hear it.

11 Would anyone from the City, anyone else from the
12 City of Albuquerque, like to comment on Agenda Item
13 Number 2?

14 How about for the United States?

15 MR. KILLEBREW: Your Honor, this is Paul
16 Killebrew for the United States. All we would like to say
17 is we are pleased that APD has undertaken a systematic
18 review of these cases and are conducting that review in a
19 highly transparent manner and keeping both the parties and
20 the Court updated regularly on their progress. We are
21 interested to see the outcome of this process, to ensure
22 that APD has lessons learned and that they can take what's
23 happening in these cases and make them valuable learning
24 tools at their training academy and in other parts of the
25 Department.

1 THE COURT: Thank you, Mr. Killebrew.

2 Mr. Mowrer, would you like to comment?

3 MR. MOWRER: No, sir. Thank you.

4 THE COURT: Would anyone else like to comment on
5 Agenda Item Number 2?

6 Let's move to Agenda Item Number 3, update on
7 implementation of Compliance Plan under joint stipulation
8 suspending CASA paragraph 38, which is Document Number 355.

9 Is this -- Mr. Schmehl, are you going to address
10 this first?

11 MR. SCHMEHL: Your Honor, I'm going to quickly
12 pass it over, actually, to Lt. Cori Lowe from the Compliance
13 Bureau, who will speak directly to that agenda item.

14 THE COURT: All right.

15 Lt. Lowe?

16 LT. LOWE: Good afternoon, Your Honor. Lt. Lowe
17 with APD.

18 THE COURT: Afternoon.

19 LT. LOWE: Just to follow up, this is the second
20 half of the Compliance Plan. And just to -- for everyone's
21 knowledge, there were 91 tasks that were passed out from
22 January -- I'm sorry, from February 1st to July 31st of
23 2018. We have finished -- this Compliance Plan was ended on
24 July 31st. And out of the 91 tasks, APD has completed 88
25 of those. That's a rate of 96.70 percent. However, 3 out

1 of the 91 tasks that were -- have not been completed to
2 date. And I'll just explain those in a little bit of detail
3 just so the Court knows: There are two tasks that are
4 duplicates. They're just in two separate areas within the
5 Compliance Plan. And that is to deliver basic review
6 function training to the backlog review team members and
7 their supervision. This one was extended because of the
8 hiring process. And we're in the -- we're still in the
9 process of hiring the personnel for APD to assist with
10 the -- the backlog review. We did add another deadline for
11 this. Again, it's dependent on the City's hiring process,
12 and we are shifting towards the back end of that so we can
13 hire new people and we can get those guys trained up.

14 The third one that was not complete was part of
15 the Force Review Board. And that is also a training
16 component. And that is to train new Force Review Board
17 members on policies, expectations, and procedures for
18 conducting a thorough review. There were 11 tasks plotted
19 out in this one particular area. We did complete all of
20 them, except for this one. But as we started doing a full
21 review of the Force Review Board, we took -- we changed --
22 we -- to Lt. Jennifer Perez. And she has started that team
23 up to improve our current efforts and processes to include
24 the goals and matters and streamline that process all the
25 way through. She's in the process of creating a training

1 plan, which we're going to go with the seven-step training
2 process used at the training academy in order to get that
3 training conducted.

4 So those are the three tasks that we did not
5 complete that we did include in our future Compliance Plan
6 as we move on to the second full Compliance Plan to the
7 Court.

8 Were there any other questions or concerns for
9 the Compliance Plan?

10 THE COURT: No, not from the Court.

11 Would anyone else from the City like to address
12 Agenda Item Number 3?

13 How about Dr. Ginger? Would you like to address
14 anything that Lt. Lowe discussed?

15 DR. GINGER: Just a very brief point, Your Honor.
16 Again, this is another example of APD initiating a
17 systems-analytic approach to the problems they're
18 confronting. They have -- over the last six months, I
19 suppose, they have been much more data-oriented than they
20 were before, and it's a major step forward. We now have
21 goals, objectives, and data to track those objectives over
22 time, which is what will bring this process to completion.
23 So this new -- this new process that you're hearing about is
24 incredibly important, long-term.

25 THE COURT: Very good.

1 How about for the United States? Mr. --

2 MR. KILLEBREW: Your Honor --

3 THE COURT: -- Killebrew?

4 MR. KILLEBREW: -- very briefly. This is Paul
5 Killebrew. We commend the City for having made the progress
6 in the first Compliance Plan and look forward to working on
7 the next one with them.

8 THE COURT: Mr. Mowrer, would you like to
9 comment?

10 MR. MOWRER: No, sir. Thank you.

11 THE COURT: Would anyone else like to comment on
12 Agenda Item Number 3?

13 All right. Moving to agenda Item Number 4. This
14 is the update on Use-of-Force Suite SOPs review and
15 development process.

16 And who will address this first for the City?

17 MR. SCHMEHL: Your Honor, this is Assistant City
18 Attorney Jeramy Schmehl. I will take the lead on Agenda
19 Item Number 4 for the City.

20 Your Honor, this agenda item speaks to the
21 Use-of-Force Suite of Policies and also the process in the
22 background to get those policies revised. Document 355
23 speaks to technical assistance by Dr. Ginger in these
24 policies. So the monitor and the parties have had a series
25 of meetings about each one of those policies; and those

1 being 2-52, which is the Use-of-Force general policy; 2-53,
2 which is definitions; 2-54, which is intermediate weapons;
3 and then also 2-55.

4 And to give Your Honor a little bit of history of
5 what happened in each of one of these circumstances with
6 each one of these policies, a draft was circulated to the
7 monitor and parties. There was a period of time to comment
8 on each one of those and then there were meetings to discuss
9 the comments. In the background of that process,
10 Cdr. Middleton is working to reconcile those comments. And
11 there also is a -- there's the Department policy development
12 process sort laying on the top of all of that.

13 So as it stands right now, it has -- and there
14 are many other places it has to run along. And I neglected
15 to mention that the chief has a series of meetings on 2-52.
16 There were a good many comments on that one. Those comments
17 were captured, taken into consideration, and then
18 incorporated into the policy. And that is the first time
19 ever in the history of this process where the Chief of
20 Police got out in front of personnel, discussed the general
21 Use-of-Force Policy, which is the touchstone of the reform
22 effort, as it relates to use of force. So I think that
23 was -- the City believed that was very, very significant.

24 With the rest of them, they were -- the other
25 piece of this policy-development process has been the public

1 presentation of policies to -- with the oversight board. So
2 2-52 has been presented. 2-54, which, again, is the
3 intermediate weapons, and 2-55, which is deescalation, which
4 is a brand-new policy, and it's a stand-alone policy, which
5 previously was two paragraphs in the general Use-of-Force
6 Policy, will be presented by Cdr. Middleton and capture of
7 comments from the public. And that's another piece of this
8 policy-development process that's been a huge improvement.
9 Now, that leads to the -- and we are on track with those
10 policies to get them within the September 21 deadline, which
11 is mentioned -- which actually has been ordered by the
12 Court, to get all of those through the policy-development
13 process.

14 The last two to draft, 2-56 -- will be
15 Number 2-56 and 2-57. 2-56 speaks to officers'
16 responsibilities in reporting uses of force. And 2-57 will
17 speak to the review and investigation processes involved
18 when a use-of-force by an officer takes place. Those two
19 policies -- we will be getting a draft of those two policies
20 to the monitor tomorrow. They will have time to review and
21 comment on those policies. And then we will be having a
22 meeting to discuss them. And then the City and the
23 Department will work to reconcile or incorporate those
24 comments.

25 The significant piece about these last two is

1 that we are going to work -- the City is going to work with
2 POB to make sure that the September 21st deadline for
3 these policies to be discussed, reviewed, commented upon,
4 and finally resolved, come within that deadline, which has
5 been established by the Court, which, again, is
6 September 21st.

7 And that is what I have, Your Honor. And I stand
8 for any questions that you may have.

9 THE COURT: All right. Thank you, Counsel.

10 Would anyone else from the City like to speak on
11 this item?

12 MR. AGUILAR: No, Your Honor, not from us. Thank
13 you.

14 MALE SPEAKER: And I would like the record to
15 reflect that Mr. Schmehl is sitting for questions.

16 THE COURT: All right.

17 Dr. Ginger, would you like to comment on Agenda
18 Item Number 4?

19 DR. GINGER: Yes, Your Honor. Again, just very
20 briefly, sort of overview and oversight. What we're seeing
21 from APD on this policy development cycle is considerably
22 more effective than what we saw in the last policy
23 development cycle in 2015. We find their responses to
24 suggest changes, additions, et cetera, to be much more open
25 and reasonable and collaborative. So I'd like to commend

1 the City and the City staff at PD and City Attorney's Office
2 for their approach to this second cycle of policy.

3 THE COURT: All right. Thank you, Dr. Ginger.

4 Mr. Killebrew, would you like to comment?

5 MR. KILLEBREW: Yes, Your Honor. Thank you. You
6 know, I am involved in police reform cases across the
7 country. And there is a consistent theme on policy review,
8 which is a little bit of sticker shock just how long it
9 takes to get a policy through the entire process. And it
10 can be hard to understand why it would take so long to get
11 these policies done until you see what all is involved in
12 it. And it has to do with time it takes to look at all the
13 best practices out there and craft a draft that reflects
14 those practices in clear and concise language. And then it
15 concerns getting all the stakeholders engaged and getting
16 their review. And that's the stakeholders within the police
17 department and in the broader community. And then, after
18 you've done all of that, you have to make sure that it's
19 going to be approvable in the litigation with the United
20 States and the Union and the monitor and, ultimately, the
21 Court.

22 So I understand that the process is coming right
23 up against the Court's deadline of September 21st, but to
24 me, it's not particularly surprising and -- as the defendant
25 is taking as much time, but I think they're putting out

1 policies that are a clear improvement over previous drafts.

2 Thank you, Your Honor.

3 THE COURT: All right. Thank you, Counsel.

4 Mr. Mowrer, would you like to comment on Agenda
5 Item Number 4?

6 MR. MOWRER: The only thing I would say is -- on
7 behalf of the Albuquerque Police Officers Association, Your
8 Honor, is the parties have been working very hard to try and
9 come up with policies that comport with what we believe the
10 mission of this Department is, and that we're appreciative
11 of the understanding of the other parties in working with
12 the Union in trying to keep this as simple as possible.

13 THE COURT: Thank you, Counsel.

14 Would anyone else like to comment on Agenda Item
15 Number 4?

16 All right. Then, moving to Agenda Item Number 5.
17 It is the update on filing of the August 31, 2018, interim
18 report under joint stipulation suspending CASA
19 paragraph 308, which is Document Number 355.

20 Dr. Ginger, are you going to address this first?

21 DR. GINGER: Yes, sir, Your Honor. Thank you.

22 We'll have our second so-called mini report to
23 the Court, as scheduled, on 31 August. It will reflect
24 actions taken and completed during the monitor's technical
25 assistance phase of this current -- or the then current

1 reporting period. And that technical assistance is designed
2 collaboratively with DOJ, APD, and the monitoring team in
3 order to help us give APD the information that is important
4 for them to bring new command staff up to speed on the key
5 issues confronting APD and to get an integrated approach to
6 the problems and issues that we've identified as in need of
7 resolution over the next few months.

8 So again, this is another component that's moving
9 along fairly collaboratively and it's certainly a nice
10 change and we appreciate APD's cooperation and
11 considerations.

12 THE COURT: Thank you, Dr. Ginger.

13 Mr. Schmehl, would you like to address Agenda
14 Item Number 5?

15 MR. SCHMEHL: Yes, Your Honor, just briefly. We
16 will -- we'll be circulating -- the City will be circulating
17 its draft of that report, that particular report, directing
18 the efforts to implement -- implement the Compliance Plan on
19 the 17th of the August. We expect comments back on the
20 draft from the parties and the monitor on the 24th of
21 August. And then an updated draft will be circulated
22 August 29th to reconcile any sort of issues that there may
23 be on August the 30th. And of course, the City will take
24 the lead in filing that joint report, which is due to the
25 Court on Friday, August 31st.

1 THE COURT: All right. Thank you, Counsel.

2 Would anyone else from the City like to address
3 Agenda Item Number 5?

4 MR. SCHMEHL: No, Your Honor.

5 THE COURT: For the United States, Mr. Killebrew.

6 MR. KILLEBREW: No comments at this time, Your
7 Honor. Thank you.

8 THE COURT: Mr. Mowrer?

9 MR. MOWRER: No, thank you, Your Honor.

10 THE COURT: Anyone else?

11 Okay. Item Number 6 on the agenda is community
12 engagement.

13 And Mr. Lewis, are you going to address this item
14 first?

15 MR. LEWIS: Your Honor, James Lewis, if I may.

16 Basically, we had a meeting yesterday to talk
17 about community engagement. We had Deputy Chief Garcia. We
18 had Cdr. Middleton. We had Cdr. Campbell. Shania Gallegos
19 was there with us. And we talked about the methodology that
20 we want to utilize to have community outreach. And I've
21 been in constant communications with Ms. Martinez because
22 she has the history.

23 And so one of the things that we had talked about
24 doing is trying to get the mayor -- we need to make sure
25 they have the CAO. We need to have the U.S. Attorneys there

1 because I think one of the things that will help when we
2 talk about community engagement and giving an update in
3 reference to the CASA, a lot of the community may not be
4 aware of exactly what the CASA is. So we thought it would
5 be nice for the U.S. Attorney's Office to give them a brief
6 overview of what the CASA is all about.

7 We also wanted to look at time parameters in
8 between maybe 6:00 and 8:30. People will sign in and then
9 question-and-answer at the end. And we're looking at
10 possibly three different locations: East side, west side,
11 and potentially at the convention center.

12 One of the things that I had to do is I have to
13 make sure that the mayor is available. So we also looked at
14 what is going on in September. We have the State Fair and a
15 lot of activity, a lot of traffic, people coming from around
16 the State, so our concern is to make sure that wherever we
17 have it -- and we've talked about locations like some of the
18 churches, God's House up on 84, east side of town, that
19 could possibly host that and then have them invite a lot of
20 the members there.

21 So we are still working at -- we're working
22 through that. We looked at the list of some of these
23 invitees. We've talked about the amici, the stakeholders,
24 the base community, the CPCs, officers of the neighborhood
25 coordination, Native American Chamber, Hispano Chamber,

1 Greater Albuquerque Chamber, the Indian Opportunity Office,
2 and we talked about the FOP. And so we're working with
3 Ms. Martinez, at this point, again, to make sure we have
4 what they've incorporated in the past. I was not here when
5 they had these town halls, per se, before, so I'm trying to
6 make sure we don't overlook anybody. So this may not be a
7 total list, but we'll find out if there are some other folks
8 that we should be inviting to the table. And again, giving
9 you an update of what's going on with the CASA and trying to
10 get people in and out. And one of things that we talked
11 about is not having it on a Wednesday night because a lot of
12 the folks have prayer service on those nights and they're
13 not going to come out. So we've been trying to make sure
14 that if we're going to do it, we need to do it right.

15 Just a footnote, too, that, again, we're going
16 down two different tracks and working with Deputy Chief
17 Bañez and Deputy Chief Medina because we're trying to
18 incorporate and going out to all the faith communities and
19 talk about community-oriented policing as well as the CPCs.
20 We're also looking at recruitment along those areas. So
21 we're working with Pastor Alarid, and he has access to about
22 anywhere from 70 to 72 different churches, faith communities
23 we're looking at. We've talked about Pastor Benford and
24 also we've visited with Bishop Cooper. They're head of the
25 Ministers Alliance and they are very engaged and want to get

1 involved.

2 And one of the things that we wanted to tie this
3 into is a lot of them have various ministries, they have
4 youth ministries, and we're asking them to partner with us
5 in having a safe community and a helping community, because,
6 when you look at substance abuse, a lot of them have those
7 types of programs, so we're trying get them to partner with
8 us in those areas there.

9 So that's pretty much a brief overview of where
10 we are. Again, Ms. Martinez, is there anything else we need
11 to add at this point, because we need to get your list of
12 the folks we invited before?

13 MS. MARTINEZ: Your Honor, Mr. Lewis and I
14 started discussing the need to have these community meetings
15 because APD has, since the new administration came in and
16 since the Chief Geier took over leadership of APD, started
17 having regular briefing sessions with the amici and the CASA
18 stakeholders. As you are aware, Judge Brack has included
19 the amici and the stakeholders as regular participants in
20 the public hearings in this case. Even though he denied
21 intervention for those amici who made motions to intervene,
22 he did make it clear that he would continue to hear from
23 them. And he has -- and he's done that throughout the
24 pendency of this matter.

25 Under Chief Geier's leadership and with the

1 Compliance Bureau, under the leadership of Deputy Chief
2 Garcia, every six weeks or so, the Compliance Bureau has
3 been holding meetings with the amici and stakeholders and
4 giving them a pretty comprehensive overview of what is going
5 on with the reform effort. And what we learned is that as
6 the deputy chiefs and Chief Geier have been going out to the
7 community, they have been hearing from other members of the
8 community that if they, too, want to hear what's going on
9 with reform efforts.

10 And during the last status conference, the United
11 States asked Judge Brack whether he would entertain the
12 prospect of a public hearing after the monitor and APD file
13 their August 31st report and Judge Brack indicated that he
14 would consider that request. At this point, the United
15 States will be formally withdrawing its request. When we
16 made that request, we did not take into consideration the
17 fact that the monitoring team is in the process of drafting
18 the report that will be filed on November 2nd. And so it
19 would be disruptive for Dr. Ginger to travel out here for a
20 public hearing in September. And that led us to consider
21 instead hosting -- having the City host a community meeting
22 and the APOA and DOJ will work with them and support them in
23 doing so. And we're actively now working with them in
24 setting those up. And what we anticipate doing is having
25 the Compliance Bureau and the other units within APD provide

1 the kind of presentation that they have in the past provided
2 to the Court during the public hearing so that the community
3 as a whole has an opportunity to hear from APD and know that
4 they are being seen and making these reforms that are set
5 forth in the CASA. So that is an explanation of why it is
6 that Mr. Lewis is working on putting these community
7 meetings together.

8 I also would like to just give the Court a little
9 background on what is going on in terms of the Community
10 Policing Councils. I have been working with the associate
11 monitor for community engagement that's been providing
12 technical assistance to the CPC managers and to the CPCs.
13 He has been working with them with a social media consultant
14 and, right now, are working together on presenting two days
15 of training to the Community Policing Councils. They are
16 currently planning for that training to take place on August
17 24th and August 25th. And the plan is for social media --
18 it will permit the future -- community about what CPCs do in
19 the community and for the Albuquerque Police Department.
20 And also --

21 THE COURT: Ms. Martinez, I'm sorry you're
22 cutting out. Could you back up a little bit?

23 (Reporter interruption for clarification.)

24 When you started talking about the dates.

25 MS. MARTINEZ: The dates?

1 THE COURT: Yes.

2 MS. MARTINEZ: Okay. The training is scheduled
3 for August 24th and 25th.

4 THE COURT: Okay.

5 MS. MARTINEZ: And the training will include
6 social media training for the Community Policing Councils.
7 The purpose of that training will be to enable the CPCs to
8 educate the community about what the CPCs do, both for the
9 community and for APD. And it will also provide a way for
10 them to recruit new members.

11 In addition to that training, they will be
12 providing orientation for the new CPC members. Part of the
13 plan is also to recognize the community members who have
14 volunteered during the past three years and provided service
15 to the community and to the police department. They've
16 worked very hard and actually made a number of
17 recommendations that APD has accepted and incorporated into
18 their program.

19 And that is a report on the CPC front. Thank
20 you, Your Honor.

21 THE COURT: All right. Thank you, Counsel.

22 Lt. Lowe, did you wish to address Agenda Item
23 Number 6?

24 MALE SPEAKER: No, Your Honor.

25 THE COURT: Okay. Dr. Ginger, would you like to

1 address Item Number 6?

2 DR. GINGER: Yes, just very briefly, Your Honor.

3 I will note that we've seen a new spirit of involvement in
4 APD. And they're looking at the requirements related to
5 community engagement, really, for the first time in this
6 project as a benefit as opposed to simply a requirement.
7 And it's tangible. You can see in the way they think about
8 things and the way they build systems to comply with these
9 requirements.

10 THE COURT: Okay. All right. Thank you.

11 Mr. Mowrer, would you like to comment?

12 MR. MOWRER: No, thank you, Your Honor.

13 THE COURT: Would anyone else like to comment on
14 Agenda Item Number 6?

15 MR. LEWIS: Your Honor, James Lewis. One of the
16 things that we're going to be doing as we try to roll out
17 the community engagement, we also have the academy very
18 engaged. They were very engaged this past week in the
19 police sign out, so I want to thank them for what they've
20 been doing. And also for a map warrior actually working
21 with all of the different entities on community engagement.
22 Community policing is -- we've got to define it and simplify
23 it where people understand it. And we have a wonderful
24 program and we just need to make sure we educate people on
25 what it means.

1 THE COURT: All right. Thank you, Mr. Lewis.

2 Would anyone else like to comment on Agenda Item
3 Number 6?

4 So let me just -- Ms. Martinez, have we covered
5 everything on the agenda?

6 MS. MARTINEZ: Yes, Your Honor.

7 THE COURT: All right. Before we move on -- I
8 want to briefly address the upcoming deadlines and hearings,
9 but before we move on, would anyone from the City of
10 Albuquerque like to say anything else?

11 MR. AGUILAR: Your Honor, this is Esteban
12 Aguilar, the City Attorney. I just want to close by
13 thanking first the monitoring team for all of their hard
14 work and the continued technical assistance they've been
15 providing. The U.S. Attorneys have been a tremendous help
16 and an invaluable resource working with them and I'd like to
17 thank them and my staff as well. But also to the
18 Department. The Department has made tremendous strides in
19 the short amount of time that I have been here. Across the
20 board, from leadership to compliance, they've worked very
21 hard. And there's not enough time to thank everyone
22 individually, but they should be commended for their work,
23 their efforts, that we have done to this point.

24 THE COURT: All right. Thank you, Counsel.

25 Would anyone from the -- representing the United

1 States like to say anything else?

2 Dr. Ginger, would you like to mention anything
3 else?

4 DR. GINGER: No, Your Honor, I have nothing
5 further.

6 THE COURT: Mr. Mowrer?

7 MR. MOWRER: Nothing further, Your Honor.

8 THE COURT: Anyone else?

9 All right. In terms of upcoming deadlines and
10 hearings, it looks to me like the next thing that would be
11 coming up is a second mini report due on August 31, 2018.

12 Ms. Martinez, is that correct?

13 MS. MARTINEZ: Yes, it is, Your Honor.

14 THE COURT: Okay. Anything we need to discuss at
15 this time about that? Is there going to -- does anyone
16 anticipate any problems meeting that deadline?

17 MS. MARTINEZ: No, Your Honor.

18 THE COURT: Okay. Then the next thing that would
19 be due on September 2nd is the City Status Report 8.

20 And let me just ask you, Mr. Schmehl, first of
21 all, is that deadline correct and, second, do you anticipate
22 any problems meeting that deadline?

23 MR. SCHMEHL: It is, Your Honor, and no problems
24 in meeting that deadline.

25 THE COURT: All right. Thank you.

1 And then it looks like there is a tentative
2 status conference set for September 7. And I assume Judge
3 Brack will decide whether that's going to work for that date
4 or not. Are the parties still good with tentative status
5 conference on September 7 or anyone -- let me put it this
6 way: Is anyone not okay with that?

7 Okay.

8 All right. Very good. Counsel, Dr. Ginger,
9 everyone else, appreciate all your input. I think we have
10 covered everything. I guess I should just remark that there
11 seems to be a demonstrable change in vibes since the last
12 status conference I attended, and it's very encouraging and
13 gratifying. And I'm sure Judge Brack will be very pleased
14 to read the transcript and see how well everyone is
15 cooperating and moving forward.

16 So I commend you all on your efforts. It's an
17 amazingly complex, difficult, and time-consuming job. And I
18 know I appreciate it, and I'm sure Judge Brack appreciates
19 all the work everyone's putting into it.

20 So that being said, if there's nothing further.
21 Thank you very much for your time and the court will be in
22 recess.

23 (The proceedings concluded at 2:32 P.M.)
24
25

1 UNITED STATES OF AMERICA

2 DISTRICT OF NEW MEXICO

3
4 CERTIFICATE OF OFFICIAL REPORTER

5 I, Vanessa I. Alyce, RPR, NM CCR, and Federal Official
6 Court Reporter in and for the United States District Court
7 for the District of New Mexico, do hereby certify that
8 pursuant to Section 753, Title 28, United States Code, that
9 I did report in stenographic shorthand to the best of my
10 skill and ability the foregoing pages 1-41 of the
11 proceedings set forth herein, that the foregoing is a true
12 and correct transcript of the stenographically recorded
13 proceedings held in the above-entitled matter and that the
14 transcript page format is in conformance with the
15 regulations of the Judicial Conference of the United States.

16
17 Dated this 14th day of August 2018.

18
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